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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 430.

EDWARD CONNOLLY,

Petitioner,

v.

FARRELL LINES INCORPORATED,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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Statement of the Case.

This brief is submitted in opposition to a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit which affirmed in part the judgment of the United States District Court for the District of Massachusetts and directed a verdict in favor of the respondent at the close of the petitioner's case.

This action was brought by Edward Connolly, an able-bodied seaman, on the SS *African Grove*, to recover damages because of injuries which he alleged he sustained during his employment on that vessel by respondent, Farrell Lines Incorporated. The petitioner set up three counts in his complaint. It first alleged that the petitioner was entitled to damages under the Jones Act, 46 U. S. C. A.

Section 688; the second count alleged that the petitioner was entitled to damages under the General Maritime Law and alleged a breach by the respondent of its duty to maintain the vessel, its equipment and crew in a safe and seaworthy condition; the third count sought damages under the General Maritime Law for maintenance because of the injuries which petitioner alleges were sustained in the service of the vessel.

At the close of the petitioner's case, motions were made by the respondent for the direction of a verdict in its favor on all three counts. This motion was granted and the Court directed the jury to return a verdict in favor of the respondent on the three counts.

Thereafter, an appeal was taken by petitioner to the Circuit Court of Appeals for the First Circuit and, after argument, that Court sustained in part the action of the Trial Court and affirmed the dismissal of counts 1 and 2 of the complaint. It reversed the dismissal of the third count for maintenance, stating that it believed that there was a question pertaining to that count on which the jury should have passed.

The respondent has been informed by the Clerk of the Court of Appeals for the First Circuit that the Record in that Court has been certified by him and forwarded to the Clerk of the Supreme Court of the United States. All references to testimony hereinafter made are to the pages in said certified Record.

Preliminary Comment Concerning the Petition.

There are no special, important or compelling reasons set forth in the petition for the Court to grant certiorari in this case.

The petitioner failed to prove a *prima facie* case.

One Court heard petitioner's testimony and observed his demeanor as he testified. The Court of Appeals reviewed his testimony carefully and could not conclude that the petitioner had produced any evidence of negligence or unseaworthiness on the part of the respondent causing or contributing to the petitioner's injuries.

The third count for maintenance does not involve any issue of negligence or unseaworthiness. The sole issue raised by that count is whether petitioner was injured in the service of the vessel without misconduct on his part. This point is not presented herein for review.

Statement of Facts.

On or about December 3rd, 1956, the SS. *African Grove* was in the port of New York. Edward Connolly signed foreign articles as an able-bodied seaman on that day. The *African Grove* was and still is owned, operated and controlled by Farrell Lines Incorporated (R. 7). Farrell Lines Incorporated also employed the members of the crew (R. 7). The vessel left New York on December 10th, 1956, and, after a stop at Portland, Maine, sailed for Tenerife in the Canary Islands. It then sailed for Dakar, French West Africa. After Dakar, it called at West African ports, finally arriving at Abidjan on February 10th, 1957.

While the vessel was at Abidjan, Connolly complained of pain in his right ear and he was sent ashore for treatment to a local doctor (R. 20). He returned to the vessel and sailed with it on February 12th for Monrovia, Liberia, arriving there on Thursday, February 14th, 1957.

Upon arrival at Monrovia, he requested permission to again go ashore for medical treatment. On the morning of February 15th at about 10:00 a. m., Connolly went ashore to the Company's office. He was then sent to a local doctor

(R. 46-47). Connolly testified that he was treated and left the doctor's office at approximately 12:30 p. m. with the doctor, who offered to drive him back to the vessel, berthed in the port area, several miles from the business area of Monrovia. When approximately a mile from the vessel, Connolly requested the doctor to drop him off at a restaurant which they were then passing (R. 21, 50-51). Connolly went into the restaurant to have lunch, during the course of which he admits having at least three beers (R. 52). Thereafter, he went into the bar adjacent to the restaurant ostensibly to ascertain the hour the vessel was to sail (R. 22, 47-48). He found therein several of his shipmates who were engaged in a game of dice. Connolly participated in the game, during which time he admits having at least four more beers (R. 54).

One of the other participants in the game was the Galley Utilityman from the *African Grove*, Alexander Phillips (R. 22). The Ship's Carpenter, who was rolling the dice, complained that he was "short" on some bets. At this point, Connolly informed him that the reason for this was that Phillips was not "covering his bets" (R. 23, 55, 56). An argument then developed which ended the game and Phillips is said to have retired to one side of the room while Connolly, continuing to drink beer, was standing with another group. Connolly alleges that in a few minutes Phillips came across the room and assaulted him (R. 24, 57, 58).

After exchange of blows, Connolly succeeded in knocking Phillips down and straddled him while he was prostrate (R. 58). He held him for a few minutes and then Connolly got up and stepped back allowing Phillips to arise. Connolly states that Phillips at this time threatened to kill him and stated that he was going to get a knife. Phillips turned and went out a doorway which Connolly thought led to the

kitchen in the bar. As he saw Phillips leave, Connolly then left by another doorway which led to the open space between the bar and the restaurant (R. 59).

As Connolly got outside the bar, he saw a number of bottles; he selected one and broke off the neck of it (R. 59-60). He stated that he then put the jagged bottle in his pocket. He walked over to the restaurant, a distance of approximately ten feet, and stood there waiting for a period of time (R. 25).

When he did not see Phillips come out, Connolly walked out to the road and walked down it a short distance to a group of men standing there. According to Connolly, they told him that Phillips had gone back to the vessel (R. 60). Connolly states he decided to return to the bar to wait for a short period before returning to the vessel (R. 52).

As he turned and took a step or two toward the bar, he saw Phillips come out of the bar. He admits that Phillips did not have any weapon or other object in his hand (R. 61). Connolly states that he had put the bottle with the jagged edge in his pocket and did not have it in his hand (R. 61). He started to walk toward the bar, allegedly because he wanted to see that the argument, or fight, was terminated peaceably. Although Phillips was at least twenty feet from Connolly when he first noticed him, he continued to approach Phillips. He was approximately three steps away from Phillips when Phillips hit him over the left forehead with a piece of wood, knocking him unconscious (R. 26, 27, 62, 63). Connolly states that he awoke the following morning in a local hospital in Monrovia. He does not know how he got to the hospital nor what, if anything, occurred after Phillips hit him with the aforesaid piece of wood (R. 27).

Connolly also developed by direct testimony of one James Cutrone, Shipping Commissioner of the Port of Boston (R. 34-36a), who appeared pursuant to a subpoena